

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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PHYLLIS M. PECK,

Plaintiff,

-against-

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.  
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JUDGMENT  
07-CV- 3762 (NGG)

A Memorandum and Order of Honorable Nicholas G. Garaufis, United States District Judge, having been filed on August 6, 2010, denying the Commissioner's motion for judgment on the pleadings; granting in part and denying in part plaintiff's motion for judgment on the pleadings; remanding the case for further proceedings consistent with the Court's Memorandum and Order because the Administrative Law Judge did not properly apply the regulations in assessing plaintiff's subjective complaints of pain; ordering that on remand, the Administrative Law Judge should properly assess the extent and credibility of plaintiff's allegation of pain; the Administrative Law Judge should then re-determine plaintiff's Residual Functional Capacity; and directing that the Administrative Law Judge should also make sure to: (1) expressly weigh Dr. Mehta's opinion utilizing the five factors enumerated in 20 C.F.R. § 404.1527, and (2) perform a function-by-function analysis pursuant to SSR 96-8p; it is

ORDERED and ADJUDGED that the Commissioner's motion for judgment on the pleadings is denied; that plaintiff's motion for judgment on the pleadings is granted in part and denied in part; that it is further,

ORDERED and ADJUDGED that the case is remanded for further proceedings consistent with the Court's Memorandum and Order because the Administrative Law Judge

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did not properly apply the regulations in assessing plaintiff's subjective complaints of pain; that it is further,

ORDERED and ADJUDGED that on remand, the Administrative Law Judge should properly assess the extent and credibility of plaintiff's allegation of pain; the Administrative Law Judge should then re-determine plaintiff's Residual Functional Capacity; and that it is further,

ORDERED and ADJUDGED that the Administrative Law Judge should also make sure to: (1) expressly weigh Dr. Mehta's opinion utilizing the five factors enumerated in 20 C.F.R. § 404.1527, and (2) perform a function-by-function analysis pursuant to SSR 96-8p.

Dated: Brooklyn, New York  
August 06, 2010

s/Robert C. Heinemann

ROBERT C. HEINEMANN  
Clerk of Court